

LEACHCO, INC.
MOTION FOR INJUNCTION PENDING APPEAL
AND BRIEF IN SUPPORT

Exhibit 5

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

January 30, 2023

Christopher M. Wolpert
Clerk of Court

LEACHCO, INC.,

Plaintiff - Appellant,

v.

CONSUMER PRODUCT SAFETY
COMMISSION; ALEXANDER
HOEHN-SARIC, Chair of the Consumer
Product Safety Commission; DANA
BAIOCCO, Commissioner of the
Consumer Product Safety Commission;
MARY T. BOYLE, Commissioner of the
Consumer Product Safety Commission;
PETER A. FELDMAN, Commissioner of
the Consumer Product Safety Commission;
RICHARD TRUMKA, Commissioner of
the Consumer Product Safety Commission,

Defendants - Appellees.

No. 22-7060
(D.C. No. 6:22-CV-00232-RAW)
(E.D. Okla.)

ORDER

Before **HARTZ** and **MATHESON**, Circuit Judges.

Leachco, Inc., is a respondent in an ongoing administrative proceeding before the Consumer Product Safety Commission. It sought a preliminary injunction in district court to enjoin the administrative proceeding on the ground that the Commission is unconstitutionally structured. The district court denied the motion and Leachco appealed that ruling. The matter is before us on Leachco's motion for an injunction prohibiting the

Commission from continuing the administrative proceeding pending appeal. The Commission opposes the motion.

We evaluate a motion for an injunction pending appeal using the preliminary injunction standard. *See Homans v. City of Albuquerque*, 264 F.3d 1240, 1243 (10th Cir. 2001). Thus, Leachco “must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “As a preliminary injunction is an extraordinary remedy, the right to relief must be clear and unequivocal.” *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258 (10th Cir. 2005) (internal quotation marks omitted).

Leachco has failed to meet that burden. Accordingly, we deny its motion for an injunction pending appeal. We also deny Leachco’s alternative request to expedite the appeal.

Entered for the Court

A handwritten signature in dark ink, appearing to read 'Christopher M. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk